LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
MAR 5 1965
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 958

JOHN PARROT and DENNIS FLOOD,

Petitioners,

—v.—

CITY OF TALLAHASSEE, FLORIDA.

PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT, SECOND JUDICIAL CIRCUIT, LEON COUNTY, FLORIDA

EARL M. JOHNSON
625 West Union Street
Jacksonville, Florida

JACK GREENBERG
LEROY D. CLARK
DERRICK A. BELL, JR.
10 Columbus Circle
New York, New York 10019

Attorneys for Petitioners

INDEX

	PAGE
Citation to Opinions Below	1
Jurisdiction	2
Questions Presented	2
Constitutional Provisions Involved	3
Statement	3
How the Federal Questions Were Raised and Decided Below	4
Reasons for Granting the Writ	6
I. The State of Florida has Enforced Racial Discrimination Contrary to the Equal Protection and Due Process Clauses of The Fourteenth Amendment to the Constitution of the United States	6
II. The Court Below Arbitrarily Refused to Review the Federal Questions Raised by Petitioners	8
Conclusion	12
Appendix	1a
Order Affirming Municipal Court Judgments	1a
Order	4a
Letter from Counsel for Petitioners to Clerk of Circuit Court	5a

PAGE

Letter from Counsel for Petitioners to the District Court of Appeals 6a

Letter from Clerk of Circuit Court 7a

Order of July 28, 1964 ..... 8a

Table of Cases

Aris v. State, 162 So. 2d 670 10

Atlantic Coast Line Railroad Co. v. Mack, 64 So. 2d 304 9

Epps v. Great Southern Truck Co., 104 So. 2d 43 10

Helm v. Carter, 160 Fla. 777, 36 So. 2d 808 9

Lambert v. State, 105 So. 2d 612 10

National Dairy Products Corp. v. Odham, 100 So. 2d 394 10

Palmer v. Johnson, 97 Fla. 479, 121 So. 466 9

Peterson v. City of Greenville, 373 U. S. 244 8

Robinson v. State of Florida, 378 U. S. 153 ..... 2, 6

Russom v. State, 109 So. 2d 30 10

Virginian R. Co. v. Mullens, 271 U. S. 220 11

Wieczorek v. Williams, 71 So. 2d 262 9

Williams v. Georgia, 349 U. S. 375 11

Wright v. Georgia, 373 U. S. 284 11

PAGE

STATUTES, ORDINANCES AND RULES

Ordinance of Tallahassee, Florida, Section 23-28 ..... 3, 4
Florida Statutes, Section 509.141 7
Florida Statutes, Section 821.01 ..... 2, 4, 7
Florida Statutes, Section 59.08 9
Florida Appellate Rule 4.5(c)(1) 8
Florida Appellate Rule 6.9 9
Florida Administrative Code, c 170C Section 8.06 7
United States Code, Title 28, Section 1257(3) 2

IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. .....

JOHN PARROT and DENNIS FLOOD,

Petitioners,

—v.—

CITY OF TALLAHASSEE, FLORIDA.

PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT, SECOND JUDICIAL CIRCUIT, LEON COUNTY, FLORIDA

Petitioners pray that a writ of certiorari issue to review the judgment of the Circuit Court, Second Judicial Circuit, Leon County, Florida entered in the above-entitled case on June 15, 1964.

Citations to Opinions Below

The order of the District Court of Appeals, First District, State of Florida, dismissing petitioners' writ of certiorari is the final judgment of that court. It is unreported, and is set forth in the appendix hereto, *infra*, p. 4a. The opinion of the Circuit Court, Second Judicial Circuit, Leon County, Florida, affirming the conviction of petitioners in the Municipal Court of Tallahassee, Florida, is unreported and is set forth in the appendix hereto, *infra*, pp. 1a-3a.

Jurisdiction

The judgment of the Circuit Court (R. 21-22) was entered on June 15, 1964, *infra*, pp. 1a-3a. The Motion for Rehearing was denied on July 28, 1964 (R. 27), *infra*, p. 8a.

The District Court of Appeals is the final appellate court for discretionary review of convictions under a municipal ordinance and its order dismissing petitioners' writ of certiorari was entered on November 6, 1964 (R. 42), *infra*, p. 4a. Chief Justice Earl Warren, on February 3, 1965, granted an application extending the time for filing the instant petition for writ of certiorari until March 6, 1965.

The jurisdiction of this court is invoked pursuant to Title 28, U. S. C. §1257(3), petitioners having asserted below and claiming here deprivation of rights, privileges and immunities secured by the Constitution of the United States.

Questions Presented

1. Whether petitioners' conviction for a "sit-in" demonstration which occurred prior to *Robinson* v. *State of Florida*, 378 U. S. 153, is a denial of equal protection and due process of law under the Fourteenth Amendment to the United States Constitution.

2. Whether affirmance of petitioners' convictions is based on an arbitrary refusal to review federal questions where the Circuit Court (from whose judgment the petitioners seek a writ of certiorari) ruled against petitioners on the merits, but the District Court of Appeals, with its discretionary jurisdiction, dismissed a petition for writ of certiorari on the ground that no extensions of time could be

granted to comply with a non-jurisdictional procedural requirement.

Constitutional and Statutory Provisions Involved

1. This case involves:

(a) Section 1 of the Fourteenth Amendment to the Constitution of the United States.

(b) Section 821.01 of the Florida Statutes:

> Whoever willfully enters into the enclosed land and premises of another, or into any private residence, house, building or labor camp of another, which is forbidden so to enter, or not being previously forbidden, is warned to depart therefrom and refuses to do so, or having departed re-enters without the previous consent of the owner, or having departed remains about in the vicinity, using profane or indecent language, shall be punished by imprisonment not exceeding six months, or by a fine not exceeding one hundred dollars.

(c) Section 23-28 of the Ordinances of Tallahassee, Florida which makes it unlawful for any person:

> to commit within the corporate limits of the city, any act which is or shall be recognized by the laws of the state as a misdemeanor.

Statement

The petitioners, two white students of the Florida State University, in the company of three fellow Negro students sought service at "The Mecca" Restaurant in Tallahassee, Florida located near their campus (R. 85). The restaurant draws most of its business from students at

Florida State University but maintained a policy of refusing service to Negro students (R. 57, 60). The owner, Mr. Blount, stopped the five students on the steps of the restaurant, asked them to leave, and they refused. Mr. Blount called a policeman who also requested the students to leave (R. 54). The three Negro students began to move from the premises but the two petitioners remained. The officer called the Negro students back and placed all five students under arrest (R. 76). The day previous to the arrest, Mr. Blount had asked petitioners to leave the premises when they offered coffee they had purchased to two Negroes who joined them (R. 84-85). Petitioners had on all occasions prior to this date been served without incident in the restaurant (R. 89).

Petitioners were tried in the Municipal Court of Tallahassee and convicted for violation of §821.01, Florida Statutes (incorporated under municipal ordinance of the City of Tallahassee §23-28). They were ordered to pay a fine of $100 or serve 30 days in the City Jail (R. 120). Charges against the three Negro defendants were dismissed for lack of evidence (R. 80-81).

How the Federal Questions Were Raised

After petitioners' conviction in the Municipal Court, a timely notice of appeal was filed to the Circuit Court of the Second Judicial Circuit, Leon County, Florida. Appended thereto were Assignments of Error, specifically objecting that the convictions were in violation of the equal protection and due process clauses of the Fourteenth Amendment (R. 11-12).

The Circuit Court, after deciding the appeal was properly lodged there (R. 18-20), disposed adversely of the federal constitutional claims on June 15, 1964, stating:

"Appellants have argued in their brief only assignments of error 3, 4, and 5. The sole point that has been urged is that the arrests and convictions constitute 'racially discriminatory state action' constituting a denial of due process of law and equal protection of the law as guaranteed under the Fourteenth Amendment to the United States Constitution.

* * *

The point or question thus argued is substantially the proposition of whether or not a state statute or municipal ordinance which punishes for a wilful refusal to leave private premises when so requested by the owner or his agent, constitutes unconstitutional state action, when the motive for the owner's request to leave involves some racial considerations. The contentions of the appellants may not be sustained. The statute and ordinance involved are merely to protect against and punish wilful and persistent trespasses to private property. The owner's motives in excluding the trespassers are immaterial" (R. 21-22).

Petitioners filed a motion for rehearing calling the attention of the Circuit Court to *Robinson* v. *State of Florida, supra,* handed down by this Court seven days after the decision of the Circuit Court (R. 23-24). Petitioners reasserted their claims under the Fourteenth Amendment, and noted that the *Robinson* case voided convictions identical to those of petitioners (R. 23-24). The Circuit Court denied the motion for rehearing (R. 27).

Petitioners filed a timely petition for writ of certiorari to the District Court of Appeals which raised again the claims of denial of equal protection of law under the Fourteenth Amendment (R. 28). The respondent moved to dismiss the petition for certiorari on the sole ground that the

record which accompanied the petition did not have the certification of the clerk of the Circuit Court (R. 43). Petitioners secured the certification of the record, and made objections on November 3, 1964 to a dismissal of the petition for certiorari on the ground that certification of the record had been delayed (Appendix, p. 6a). On November 6, 1964, the District Court of Appeals granted respondent's motion to dismiss the petition for certiorari (R. 42).

Reasons for Granting the Writ

This case involves substantial questions affecting important constitutional rights, resolved by the court below in direct conflict with a recent decision of this Court.

I.

The State of Florida Has Enforced Racial Discrimination Contrary to the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the Constitution of the United States.

Petitioners' right to reversal of their convictions on the merits could not be clearer. There are no novel or unsettled questions of law involved here, but merely the necessity for assuring enforcement of the principles announced by this Court in *Robinson* v. *Florida*, 378 U. S. 153.

The facts are simple. Petitioners are two white students who while attending Florida State University participated with Negro students in a joint attempt to use a racially segregated restaurant located near their campus. It was a classic "sit-in," with petitioners being arrested solely because the owner refused to serve whites accompanied by Negroes.

At the time of their arrests and convictions in 1963, the Florida Board of Health maintained a regulation which required restaurants to provide separate lavatory and toilet rooms for white and Negro persons. This was the same regulation which occasioned this Court in *Robinson, supra*, to void trespass convictions brought on the complaint of a proprietor acting in conformance with the discriminatory state policy. The regulation was not repealed until June 23, 1964, the day after *Robinson, supra*, was decided.[1] The Circuit Court below was apprised of *Robinson, supra*, in a motion for rehearing, but flatly refused to reverse its judgment.

The *Robinson* case reversed convictions for trespass under §509.141 of the Florida Statutes. The writ should issue in this case to clearly state that where the facts are identical to *Robinson* convictions under Florida's other trespass statute (§821.01) must also be reversed. Both statutes prohibit trespass and many cases are now pending in which both charges have concurrently been made against a single act of refusing to leave a segregated restaurant.[2]

Respondent made only two objections on the merits in the Circuit Court to the reversal of petitioners' convictions, first, that a defendant must prove that the restaurant in which he was arrested actually had racially segregated toilet facilities, and secondly, that the owner must in fact have made his decision to segregate in reliance on the Florida Board of Health regulation. The writ should issue to definitively reject the first contention and reaffirm this

---

[1] Prior to repeal—Florida Administrative Code c 170C Section 8.06.

[2] Section 821.01 of the Florida Statutes unlike Section 509.141 prohibits the use of "profane" or "indecent language" in the vicinity of another's premises but there was no claim or proof that petitioners said or did anything vulgar.

Court's position on the second as stated in *Peterson v. City of Greenville*, 373 U. S. 244 and *Robinson, supra.*

II.

The Court Below Arbitrarily Refused to Review the Federal Questions Raised by Petitioners.

Counsel for petitioners submitted with the petition for certiorari a brief and what he thought was a certified record, all within the 60 day period as required by Florida Appellate Rule 4.5(c)(1). After the 60 day period expired, the Clerk of the District Court of Appeals acknowledged the timely filing of the petition for certiorari and the brief, but returned the record, noting it was in improper form (R. 41). Respondent then filed a motion to dismiss on the ground that a certified record had not accompanied the petition for certiorari. Petitioners returned the record to the Clerk of the Circuit Court, who then transmitted it to the Appellate Court in certified form.[3] Counsel for petitioners objected to dismissal of the petition for certiorari on the ground that the certified record was then before the court, the delay was due to a misunderstanding by the clerk, and the prosecution had not been prejudiced.[4]

Judge Wallace E. Sturgis of the District Court of Appeals, by order, and without opinion or citation of cases, granted respondent's motion to dismiss.

To secure review on a writ of certiorari, three instruments must be filed—the petition for certiorari, a certified

---

[3] See counsel's letter, appendix p. 5a.

[4] Counsel for petitioners ordered the certified record by telephone. The clerk thought he merely requested a copy of all the papers in his file. See copies of clerk's and counsel's letters, appendix pp. 6a, 7a.

transcript of the proceedings, and a brief. Florida Appellate Rule 4.5(c)(1). The only jurisdictional requirement is that the petition for certiorari be filed within 60 days. Section 59.08, Florida Statutes. *Helm* v. *Carter*, 160 Fla. 777, 36 So. 2d 898.[5] Petitioners in the instant case complied with that jurisdictional requirement and filed their petition for certiorari within the 60 day period.

Petitioners only error was the failure to note that the record submitted with the petition for certiorari was uncertified. This procedural requirement is clearly non-jurisdictional and within the discretion of the appellate court to permit correction for under Rule 4.5(c)(1), the court may dispense with it entirely: "Unless otherwise ordered by the court, it (the petition for certiorari) shall be accompanied by a certified transcript of the record of the proceedings." The case law is invariable in holding that jurisdictional requirements are not subject to alteration or modification by order of a court. *Wieczorek* v. *Williams*, 71 So. 2d 262. In criminal appeals, in general, the time for filing a record on appeal may be extended by the appellate court, and correction of omissions or errors in the record is within the discretion of the lower court or the appellate court. Section 924.25, Florida Statutes. Florida Appellate Rule 6.9(d).

Most important, many petitioners have been granted extensions of time to file the certified transcript of the record after a petition for certiorari was filed. *National Dairy*

---

[5] One case, however, which entertained a petition for certiorari 22 months after a final judgment has said that the court's authority to grant common law certiorari is found in the Florida Constitution and, therefore, time limitations cannot be placed on the writ even by a statute. *Palmer* v. *Johnson*, 97 Fla. 479, 121 So. 466. See also dissent in *Atlantic Coast Line Railroad Co.* v. *Mack*, 64 So. 2d 304, 307 finding the 60 day limitation to be merely a court rule imposed for efficiency.

Products Corp. v. *Odham*, 100 So. 2d 394; *Epps* v. *Great Southern Truck Co.*, 104 So. 2d 43. Indeed, the very judge who dismissed petitioners' writ of certiorari wrote the opinions in *Aris* v. *State*, 162 So. 2d 670 and *Lambert* v. *State*, 105 So. 2d 612, the former which notes that an extension of time to file a record had been granted to the petitioner, and the latter permitted an application for a further extension of time to file a record after five extensions had already been granted by the trial court.

In *Aris* v. *State*, *supra*, Judge Sturgis does not seem to have even required a showing from the petitioner as to the cause for the failure to include necessary portions of the record with the petition for certiorari. Most appellate courts, however, seem to require the applicant for additional time to make a showing of some reasonable excuse for the delay. *Russom* v. *State*, 109 So. 2d 30. As regards petitioners' cases, the failure to file the record in certified form immediately occurred through a misunderstanding between counsel for the petitioners and the Clerk of the Circuit Court, and was corrected without prejudice to the respondent. There is no claim here that the uncertified record was false in any particular, the respondent's sole objection being that the last page which should have been attached to the record as a certification was missing. Further, in these particular circumstances, a statute specifically provides that failure by a clerk in a criminal case to transmit all of the appeal papers within the time provided "shall not prejudice the rights of the parties." Section 924.28, Florida Statutes. Therefore, the judge of the District Court of Appeals may in fact have had no discretion to deny petitioners the extension of time to file the record. The statute has an obvious purpose: a clerk's derelictions should not operate to defeat a defendant seeking review of a criminal conviction.

The order of the District Court of Appeals dismissing petitioners' writ of certiorari was patently discriminatory. It conflicts with its prior orders and fails to give petitioners the protection they are entitled to under the statute governing errors made by a clerk in transmitting appeal papers. A decision so obviously unsupported by state precedent cannot be allowed to arbitrarily foreclose the petitioners' right to be free from clearly unconstitutional convictions. *Williams* v. *Georgia*, 349 U. S. 375; *Wright* v. *Georgia*, 373 U. S. 284. Particularly is this so where petitioners seek a writ of certiorari to the Circuit Court and not to the District Court of Appeals. The Circuit Court affirmed petitioners' convictions on the merits and not for any procedural defects. As the District Court of Appeals has refused to exercise its discretion to review, this court reviews the judgment of the highest court to which appeal may be taken as a matter of right. *Virginian R. Co.* v. *Mullens*, 271 U. S. 220.

The writ of certiorari should issue in this case to discourage the irresponsible and hostile use of state procedure as a bar to dismissal of the many pre-Robinson sit-in convictions presently pending in the State of Florida.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the writ of certiorari should be granted.

Respectfully submitted,

EARL M. JOHNSON
625 West Union Street
Jacksonville, Florida

JACK GREENBERG
LEROY D. CLARK
DERRICK A. BELL, JR.
10 Columbus Circle
New York, New York 10019

Attorneys for Petitioners

APPENDIX

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT,
IN AND FOR LEON COUNTY, FLORIDA

No. 10751

JOHN PARROT and DENNIS FLOOD,

Appellants,

—VS.—

CITY OF TALLAHASSEE,

Appellee.

APPEAL FROM JUDGMENTS OF MUNICIPAL COURT OF TALLAHASSEE
—No. 91335 AND No. 91336

Order Affirming Municipal Court Judgments

This cause came on for consideration of the appeal to this Court of the judgments and sentences against the appellants by the Municipal Court of Tallahassee, Florida, rendered December 7, 1963, in cases bearing numbers 91335 and 91336. Oral argument not having been requested, the Court has proceeded to consider the case on the record, assignments of error and the briefs of the respective parties.

The defendants in the trial court (appellants here) were charged with and convicted of an alleged violation of the terms of Sec. 821.01, Florida Statutes, which by Sec. 23-28, Tallahassee Code, is also made a violation of the ordinances of the city.[1] The warrant containing the charge alleges

[1] Sec. 23-28 provides that it shall be unlawful for any person "to commit within the corporate limits of the city, any act which is or shall be recognized by the laws of the state as a misdemeanor" and provides for punishment of such violations.

that each of the defendants did, on November 12, 1963 in the City of Tallahassee, "wilfully enter upon the premises of 111 South Copeland Street, known as The Mecca, and failed and refused to leave said premises when warned by the employee occupying and in charge of said premises, contrary to Florida Statutes 821.07".

Appellants have argued in their brief only assignments of error 3, 4 and 5. The sole point that has been urged is that the arrests and convictions constitute "racially discriminatory 'state action'" constituting a denial of due process of law and equal protection of the law as guaranteed under the Fourteenth Amendment to the United States Constitution. This Court will consider only the question argued, and the assignments of error not argued are considered to be abandoned. Thus, questions of sufficiency of the warrant to charge an offense and sufficiency of the evidence to support the convictions are not considered.

The point or question thus argued is substantially the proposition of whether or not a state statute or municipal ordinance which punishes for a wilful refusal to leave private premises when so requested by the owner or his agent, constitutes unconstitutional state action, when the motive for the owner's request to leave involves some racial considerations. The contentions of the appellants may not be sustained. The statute and ordinance involved are merely to protect against and punish wilful and persistent trespasses to private property. The owners motives in excluding the trespassers are immaterial. There is presently or at the time of the alleged offenses no statute or other law requiring an owner of private property for restaurant purposes to admit to his premises or to permit to remain any person whom he does not wish to be present. No constitu-

tional prohibition against such a statute or ordinance or its enforcement in this case is shown. Accordingly, it is

ORDERED and ADJUDGED, that the judgments and sentences of the trial court be and the same are, severally, this 15th day of June, A. D., 1964,

AFFIRMED.

/s/ BEN C. WILLIS
Circuit Judge

Order

IN THE DISTRICT COURT OF APPEAL

FIRST DISTRICT, STATE OF FLORIDA

JULY TERM, A. D. 1964

Case No. G-24

JOHN PARROT and DENNIS FLOOD,

Appellants,

—vs.—

CITY OF TALLAHASSEE, FLORIDA,

Appellee.

Respondent's motion to dismiss petition for writ of certiorari having been considered,

IT IS ORDERED that the motion be granted and this petition is hereby dismissed.

WITNESS the Honorable Wallace E. Sturgis, Chief Judge, and Seal of the Court this 6th day of November, A. D. 1964.

RAYMOND E. RHODES, *Clerk*

By .....
Deputy Clerk

A True Copy

ATTEST:

.....
Deputy Clerk, First District Court of Appeal, Tallahassee, Florida

October 21, 1964

David Lang, Jr., Esquire
Post Office Box 726
Tallahassee, Florida

Re: Parrott & Flood vs. City of Tallahassee
Your Law Case # 10751

Dear Mr. Lang:

Through some misunderstanding we have secured copies of all papers on file in the above style cause rather than a certified transcript of the record such as would be proper for submission along with a Petition for Writ of Certiorari. Motion to dismiss the petition for Writ of Certiorari has been filed. I am endeavoring to apply with the rules by now submitting proper certified transcript.

Please certify the enclosed "Record on Certiorari" and transmit same to the District Court of Appeal, First Appellate District. I will promptly remit your cost in and about these services upon receipt of your statement.

Yours truly,

Earl M. Johnson

EMJ/ma

Encl.

November 3, 1964

Honorable Wallace E. Sturgis
Chief Judge, District Court of Appeal
First Appellate District of Florida
Supreme Court Building
Tallahassee, Florida

Dear Judge Sturgis:

This is to advise the Court of my inability to be present at the hearing in *Parrott, et al.* v. *City of Tallahassee* scheduled for November 4, 1964.

Our reply to the Motion called up could only be that the Appellate Rules do not require, but rather, permit, the dismissal of a Certiorari Petition for failure to comply with procedural rules. The posture of this case is now such that petitioners have done all that is required of them to secure the review petitioned for, without any resulting prejudice to respondent. Of considerable relevance too is the importance of the questions involved on the review sought.

But for a misunderstanding of telephoned directions to the Clerk of the lower court respecting preparation of the record for certiorari purposes, all technical procedural requirements would have been met.

I am

Very truly yours,

/s/ Earl M. Johnson

Earl M. Johnson

EMJ/ma

cc: Leroy D. Clark, Esquire

PAUL F. HARTSFIELD Clerk of Circuit Court . Leon County

Post Office Box 726
Tallahassee, Florida

September 16, 1964

Mr. Earl Johnson
625 West Union Street
Jacksonville, Florida

Re: Parrot & Flood
vs.
City of Tallahassee
Your Law Case #10751

Dear Mr. Johnson:

Pursuant to our telephone conversation of this date, I am listing the papers in the above file that you might want copied. If you would, please check the papers you want, and enclose a check for the total amount ($1.00 per page in accordance with Florida Statutes):

—— Brief of Appellee .....12 pages
—— Brief of Appellant .....14 pages
—— Transcript of Trial .....77 pages
—— Various other papers .....20 pages.

(Please check off the papers wanted on the copy of this letter and return with check to cover costs).

Yours very truly,

Paul F. Hartsfield
Clerk of Circuit Court

by DAVID LANG, JR. /s/ D. C.
David, Lang, Jr.

P.S. Regards to Tobie and other militants.

Order

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT,
IN AND FOR LEON COUNTY, FLORIDA

No. 10751

JOHN PARROTT and DENNIS FLOOD,

Appellants,

—v.—

CITY OF TALLAHASSEE,

Appellee.

The appellants' motion for rehearing has been duly considered and is hereby denied and mandate to the trial court shall issue.

ORDERED and ADJUGED in Chambers at Tallahassee, Florida this 28th day of July, 1964.

/s/ BEN C. WILLIS
Circuit Judge

Office-Supreme Court, U.S.
FILED
MAR 29 1965
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of The United States

OCTOBER TERM, 1965

NO. 958

JOHN PARROT and DENNIS FLOOD,

Petitioners,

-v-

CITY OF TALLAHASSEE, FLORIDA

Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

ROY T. RHODES
102½ South Mon[illegible] Street
Tallahassee, Florida

EDW. J. HILL
107 Midyette-Moor Building
Tallahassee, Florida

Counsel for Respondent

IN THE

Supreme Court of The United States

OCTOBER TERM, 1965

NO. _____

JOHN PARROT and DENNIS FLOOD,

Petitioners,

-v-

CITY OF TALLAHASSEE, FLORIDA

Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

TOPICAL INDEX TO BRIEF

	PAGE
JURISDICTION	1
STATUTES, ORDINANCES and CASES INVOLVED	1
ARGUMENT	2
CONCLUSION	3

TABLE OF CITATIONS

STATUTES, ORDINANCES and CASES

	PAGE
Sec. 821.01, Florida Statutes, 1963	1
City of Tallahassee Code Sec. 23-28	1-2
28 U.S.C.A., §1257	1
Armstrong v. City of Tampa (Fla. 1958) 106 So.2d 407	2
Dresner v. City of Tallahassee (Fla. 1961) 134 So.2d 228	2
Dresner v. City of Tallahassee (Fla. 1964) 164 So.2d 208	2
State ex rel McFarland (Fla. 1954) 74 So.2d 88	2
U. S. v. Johnston 268 U.S. 220,227	3
375 U.S. 136	2
378 U.S. 539	3

JURISDICTION

Jurisdiction of this Court is invoked by Petitioners under 28 U.S.C.A., § 1257. Respondent respectfully quotes the appropriate clause therefrom:

> "Final judgments or decrees rendered by **the highest court of a state in which a decision could be had, may** be reviewed by the Supreme Court as follows:" (Emphasis added)

STATUTES AND ORDINANCES INVOLVED

It is not conceded that Section 821.01, Florida Statutes, is properly quoted in Petitioners' brief, page 3, thereof. Section 821.01, Florida Statutes, 1963, correctly reads:

> "Whoever willfully enters into the enclosed land and premises of another, or into any private residence, house, building or labor camp of another, which is occupied by the owner or his employees, being forbidden so to enter, or not being previously forbidden, is warned to depart therefrom and refuses to do so, or having departed re-enters without the previous consent of the owner, or having departed remains about in the vicinity, using profane or indecent language, shall be punished by imprisonment not exceeding six months, or by a fine not exceeding one hundred dollars."

Also, it is not conceded that Section 23-28 of the City of Tallahassee Code is properly quoted. Respondent assumes petitioners were referring to Section 23-38 of the Code which says, in part:

> "It shall be unlawful for any person to commit, within the corporate limits of the city, any act which is or shall be recognized by the laws of the state as a misdemeanor and the commission of such acts is hereby forbidden."

It is settled law that municipalities of Florida may adopt state misdemeanor statutes under their codes, and when so adopted the violation thereof becomes the violation of a city ordinance. **State ex rel McFarland** (Fla.

1954), 74 So.2d 88; **Armstrong v. City of Tampa,** (Fla. 1958), 106 So.2d 407; **Israel Dresner et als, Appellants, v. City of Tallahassee, Appellee** (Fla. 1961) 134 So.2d 228.

ARGUMENT

Respondent calls to the attention of this Court the second paragraph under the heading of "Jurisdiction," Page 2, of petitioners' brief in support of their Petition for Writ of Certiorari, which says, inter alia:

> "The District Court of Appeals is the final appellate court for discretionary review of convictions under a municipal ordinance*****".

The question of the exhaustion of state remedies and writs of certiorari to the courts of Florida by this Court, seems to have been fully answered in the case of **Israel Dresner et als, Petitioners, vs. City of Tallahassee, Respondent** (Fla. 1964). 164 So.2d 208. In that case this Court had certified certain questions of review jurisdiction to the Supreme Court of Florida; see 375 U.S. 136.

Respondent holds and urges that pursuant to **Dresner** (Fla. 1964) 164 So.2d 208, this Court accepted the answers to its certified questions, and thereupon in it **per curiam** opinion dated June 22, 1964, dismissed **Dresner's** petition for certiorari as improvidently granted; see 378 U.S. 539.

Similarly herein petitioners have not exhausted their state remedies as was the jurisdictional question in **Dresner.**

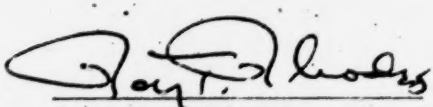
Aside from the errors pointed up in petitioners' brief, as well as no certificate of service pursuant to the rules of this court, and the lack of merit to their argument, all decision of the lower courts are correct and there is no basis for further review. As this Court stated in **U. S. vs. Johnston,** 268 U.S. 220,227:

> "We do not grant a certiorari to review evidence and discuss specific facts."

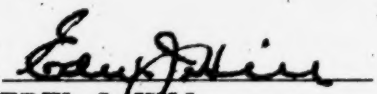
CONCLUSION

It is respectfully submitted that all decisions in this cause below are correct. Petitioners have slept on their rights by refusing to avail themselves of their state remedies and there is no basis for further review. Therefore, certiorari should be denied.

Respectfully submitted:



ROY T. RHODES
102½ South Monroe Street
Tallahassee, Florida



EDW. J. HILL
107 Midyette-Moor Building
Tallahassee, Florida

Attorneys for Respondent

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing respondent's brief in opposition to petition for certiorari has, pursuant to Rule 33 (1) of the Revised Rules of the Supreme Court of the United States, has been served by airmail upon Earl M. Johnson, 625 West Union Street, Jacksonville, Florida, and Jack Greenberg, Leroy D. Clark, Derrick A. Bell, Jr., 10 Columbus Circle, New York, New York, attorneys for petitioners.

Earl J. Hilton

March 26, 1965

Office-Supreme Court, U.S.
FILED
APR 15 1965
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 958

JOHN PARROT and DENNIS FLOOD,

Petitioners,

—v.—

CITY OF TALLAHASSEE, FLORIDA.

PETITIONERS' REPLY TO BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

EARL M. JOHNSON
625 West Union Street
Jacksonville, Florida

JACK GREENBERG
LEROY D. CLARK
DERRICK A. BELL, JR.
10 Columbus Circle
New York, New York

Attorneys for Petitioners

IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 958

JOHN PARROT and DENNIS FLOOD,

Petitioners,

—v.—

CITY OF TALLAHASSEE, FLORIDA.

PETITIONERS' REPLY TO BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Petitioners have received respondent's brief in opposition to the petition for writ of certiorari filed in this case and hereby reply pursuant to Rule 24(4) of the rules of this court.

I.

Petitioners Exhausted All Available State Remedies for Review of Their Convictions.

Respondent asserts that petitioners have not secured a judgment rendered by the highest court of the state in which a decision could be had. *Dresner* v. *City of Tallahassee* (Fla. 1964), 164 So. 2d 208, is the only case cited to support this proposition. While the brief statement on this point by the respondent does not illuminate in what particulars *Dresner* v. *City of Tallahassee* operates to defeat the granting of the petition for certiorari, a brief review of that case will disclose that petitioners have exhausted all available state remedies.

The first and most important reason why *Dresner* v *City of Tallahassee, supra,* is no bar to the granting of the petition for writ of certiorari is that petitioners here actually sought review in the District Court of Appeals and filed the petition for writ of certiorari in that court before the 60 day limit had expired. The petitioners in *Dresner* on the other hand submitted their petition for writ of certiorari *after* the 60 day limit and, recognizing the jurisdictional failure, voluntarily withdrew the petition. See *Dresner* v. *City of Tallahassee,* at page 210. The major issue in the *Dresner* case was whether the petitioners could then by-pass the District Court of Appeals and immediately proceed to this court. Petitioners here did not by-pass the District Court of Appeals, but rather made a timely application for review before that court. Petitioners' writ of certiorari was dismissed by the District Court of Appeals solely upon a denial of an extension of time to refile, in certified form, the record which had been attached to the writ of certiorari, a denial which, petitioner has asserted, denied constitutional rights.

If the respondent means to assert that the petition for writ of certiorari to the District Court of Appeals must be deemed to have been filed after the 60 day limit because the record had to be refiled, this is indeed the very issue raised in the petition for writ of certiorari to this Court—whether such a disposition by the court below acts unconstitutionally to arbitrarily foreclose review of petitioners' federal claims.

As demonstrated in the petition for writ of certiorari filed here, the law is settled in Florida that the only jurisdictional requirement is that the petition for certiorari be filed within 60 days—this indisputably, the petitioners did. Resubmitting the certified record to the District Court of Appeals to complete the application for review was non-

jurisdictional. Throughout the correcting of the record, the petition for writ of certiorari was never withdrawn, but was continuously lodged with the Court from its initial and timely submission. At the point when the District Court of Appeals dismissed the petition, it had before it all papers necessary for a full review. There is no question that the attachment of a certified record to the writ of certiorari is non-jurisdictional because the District Court of Appeals may permit the writ of certiorari to be filed without any record at all. Rule 4.5(c)(1), Florida Appellate Rules.

The petition for writ of certiorari submitted to this Court amply demonstrates that the District Court of Appeals acted unconstitutionally and discriminatorily in refusing to grant permission to secure certification of the record.

Dresner, supra, makes it clear that no further review of the decision by the District Court of Appeals can be had before the Florida Supreme Court unless the "decision conflicts on the same point of law with a prior decision of the Supreme Court or another District Court of Appeals" or if such decision "initially construes a controlling provision of the state or federal constitution or initially passes upon the validity of a state or federal statute or treaty" (at p. 212). The District Court of Appeals dismissed the petition for writ of certiorari in a two sentence order which noted only that respondent's motion to dismiss, based on the lack of a certified record, was being granted. No opinion was written and no cases cited as the court was not establishing a point of law but was simply refusing to exercise its discretion, given the facts before it, to grant time to file a certified record. Therefore, there was no conflict on a "point of law" with a prior decision of another court of its level or the Florida Supreme Court. Obviously

under these conditions there was no constrning of controlling provisions of the state or federal constitution. Therefore, under the facts of this case, petitioners have sought review in the highest court in the state to which they could proceed.

II.

The Granting of Certiorari Will Not Require a Review of Evidence.

Respondent in the last paragraph of the argument asserts that the granting of certiorari will require this court to review evidence and discuss specific facts. This, as the above proposition, is made as a bare assertion, with no explanation as to what conflict in facts or evidence the respondent deems this court would be required to resolve. Petitioners can only assume that the reference is to the assertion in respondent's brief before the Circuit Court that the evidence did not show that petitioners were asked to leave because they were white persons associating with Negroes. Respondent sought to exclude evidence of the restaurant owner's racially discriminatory operation of his premises (R. 59, 61), but the record is clear that the restaurant was maintained on a racially segregated basis. In response to the question "You do serve Negroes in your place?" the owner responded "I do not" (R. 60). Petitioners, when unaccompanied by Negroes were served without incident (R. 87-89). The Circuit Court itself resolved any dispute as to the basis for petitioners' ejection when, in affirming the convictions, it stated that the fact that,

> "the owner's request to leave involved some racial considerations . . . are immaterial. There is presently at the time of the alleged offenses no statute or other law requiring an owner of private property for res-

taurant purposes to admit to his premises or to permit to remain any person whom he does not wish to be present" (Appendix, Petition for Writ of Certiorari, page 2a).

The writ of certiorari should be entertained to finally dispose of respondent's contention that there is no "merit" in petitioners' claim that *Robinson* v. *State of Florida*, 378 U. S. 153 applies to all sit-in convictions occurring in Florida while the state maintained regulations requiring racial segregation in restaurants.

CONCLUSION

Wherefore, for the foregoing reasons it is respectfully submitted that the petition for writ of certiorari should be granted.

Respectfully submitted,

JACK GREENBERG
LEROY D. CLARK
DERRICK A. BELL, JR.
10 Columbus Circle
New York 19, New York

EARL M. JOHNSON
625 West Union Street
Jacksonville 2, Florida

Attorneys for Petitioners

CERTIFICATE OF SERVICE

This is to certify that copies of petitioners' Reply to Brief in Opposition to Petition for Writ of Certiorari have been served upon Roy T. Rhodes, Esq., City Attorney, 102½ South Monroe Street, Tallahassee, Florida and Edward J. Hill, Midyett-Moor Building, Tallahassee, Florida, this ..... day of April, 1965 by depositing copies of same in the United States Mail, air mail, postage prepaid, addressed to them as above.

.....

Attorney for Petitioners